

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JERMAINE JEVON BROWN,

CV. 06-1643-HU

Plaintiff,

ORDER TO PROCEED IN FORMA  
PAUPERIS AND TO DISMISS

v.

ALICIA FUCHS, individually and  
in her official capacity as  
Judge of the Circuit Court of  
Multnomah County,

Defendant.

MOSMAN, Judge

**IN FORMA PAUPERIS/FILING FEE**

Plaintiff, an inmate at the Multnomah County Detention Center, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff moves to proceed *in forma pauperis* (#7). IT IS ORDERED that the provisional *in forma pauperis* status given the plaintiff is confirmed.

However, pursuant to 28 U.S.C. § 1915(b)(1), a prisoner proceeding *in forma pauperis* is required to pay the full filing fee of \$350.00 *when funds exist*. Plaintiff has had funds in his inmate trust account for the preceding six months. Accordingly, an

initial partial filing fee of \$60.00 is assessed by this order. Upon payment of the initial partial filing fee, plaintiff shall be obligated to make monthly payments of 20 percent of the preceding month's income credited to plaintiff's trust account. These payments shall be collected and forwarded by the agency having custody of plaintiff to the Clerk of the Court each time the amount in plaintiff's trust account exceeds \$10.00, until the filing fee is paid in full.

#### **ORDER TO DISMISS**

Dismissal for failure to state a claim is proper if it appears beyond doubt that plaintiff can prove no set of facts in support of his claims that would entitle him to relief. Ortez v. Washington County, 88 F.3d 804, 806 (9<sup>th</sup> Cir. 1996); Cervantes v. City of San Diego, 5 F.3d 1273, 1274 (9<sup>th</sup> Cir. 1993). Because plaintiff is proceeding *pro se*, I construe the pleadings liberally and afford the plaintiff the benefit of any doubt. Ortez, 88 F.3d at 806; Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623 (9<sup>th</sup> Cir. 1988).

Plaintiff brings this action against Multnomah County Circuit Judge Alicia Fuchs. Plaintiff alleges that Judge Fuchs violated his constitutional rights during the course of his state criminal trial (which concluded on November 8, 2006). Plaintiff seeks an injunction prohibiting Judge Fuchs from presiding over any "present

or future cases involving plaintiff, and declaratory or "other" relief as the Court deems appropriate and just.

Judge Fuchs is entitled to absolute judicial immunity from liability for damages caused by judicial acts performed in her judicial capacity. Mireles v. Waco, 502 U.S. 9, 9-10 (1991); Stump v. Sparkman, 435 U.S. 349, 355-56 (1978). She is not deprived of this immunity because the actions allegedly taken were in error, were done maliciously, or were in excess of her authority. Mireles, 502 U.S. at 11; Stump, 435 U.S. at 356-57.

Moreover, because plaintiff's claims necessarily implicate the legality of his state conviction, plaintiff's cause of action is not cognizable until his conviction has been reversed, expunged, or otherwise invalidated. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994); Edward v. Balisok, 520 U.S. 641, 648 (1997).

#### **CONCLUSION**

Based on the foregoing, plaintiff's provisional *in forma pauperis* status is CONFIRMED, defendant's motion to dismiss (#5) is GRANTED, and this proceeding is DISMISSED, without prejudice.

IT IS FURTHER ORDERED that plaintiff shall pay the \$350.00 filing fee when funds exist. Multnomah County Sheriff Bernie Giusto or his designee shall collect from plaintiff's trust account an initial partial filing fee in the amount of \$60.00, and shall forward the amount to the Clerk of the Court. Sheriff Giusto shall collect future payments from plaintiff's prison trust account, to

pay the balance of the filing fee, in accordance with the formula set forth above. The payments shall be clearly identified by the name and number assigned to this action.

The Clerk of the Court is directed to send a copy of this order to Bernie Giusto, Multnomah County Sheriff, 1021 SW Fifth Avenue, Portland, Oregon 97204.

IT IS SO ORDERED.

DATED this 23rd day of January, 2007.

/s/ Michael W. Mosman  
Michael W. Mosman  
United States District Judge